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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,960	02/28/2002	Edwin C. Tucker	L3440/268829	3488

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EXAMINER

BRAY, WAYMOND D

ART UNIT


PAPER NUMBER

3725

DATE MAILED: 05/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No. <b>20/092,960</b>	Applicant(s) <b>Tucker, et al</b>	
Examiner <b>W. Donald Bray</b>	Art Unit <b>3725</b>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). <u>2</u> | 6) <input type="checkbox"/> Other:  |

### **DETAILED ACTION**

Claims 1-45 are in this application.

This application, serial no. 10/092,960 is a reissue application of U.S. Patent No. 5,779,407. In response to this action, applicant is required to inform the Patent and Trademark Office of any litigation relating to the patent sought to be reissued, and of any other information which may be material to the examination of this application.

### **Surrender of Letters Patent**

The original patent, or a statement as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

### **Information Disclosure Statement**

Receipt is hereby acknowledged of an Information Disclosure Statement (I.D.S.) filed February 28, 2002. The I.D.S. has been placed of record in the file, and a signed, dated, and initialed copy of the same is enclosed with this action.

### **Preliminary Amendment**

Receipt is hereby acknowledged of a preliminary amendment dated February 28, 2002. The amendment has been entered, and place of record in the file.

### **REISSUE DECLARATION**

The reissue declaration is defective because it fails to set forth the differences between the original patented claims 1-26 and newly submitted claims 27-47 (See: MPEP 1414).

### **Treatment of Claims**

Art Unit: 3725

Claims 1-45 are rejected as being based upon a defective reissue Declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the Declaration is set forth in the discussion above in this Office action.

With regard to the above, the claims are otherwise allowable because the prior art fails to show or fairly teach the "invention" as set forth in the claims. Specifically, the prior art cannot be "clearly read" as disclosing the use of top spar connected to two bottom spars wherein the front faces of each of the two bottom spars and the top spar are in the same plane. Assuming arguendo, that the prior art discloses structure generally readable as the claimed top and bottom spars, it is a stretch far beyond the realm of reasonable claim interpretation (especially when considering invention as disclosed) to subscribe to the prior art structure either clearly showing or fairly teaching the invention as claimed.

Claims 1-45 are rejected.

Any inquiry concerning the content of this communication or earlier communications from the examiner should be directed to W.Donald Bray whose telephone number is (703) 308-1871. The examiner can normally be reached on Monday through Friday from 8:30am to 3:00pm. Any inquiries concerning other than the content of this and previous communications, such as missing references or filed papers not acknowledged, should be directed to the Customer Service Representative, Tech Center 3700, (703) 308-1412.

Art Unit: 3725

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alan Ostrager, can be reached on (703) 308-3136. The fax phone number for this Group is (703) 305-3579.

In order to reduce pendency and avoid potential delays, Group 3720 is encouraging faxing of responses to office actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Bray of Art Unit 3725 at the top of your cover sheet.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

Bray/DI

May 14, 2003

*W. D. Bray*  
**W. DONALD BRAY**  
**PRIMARY EXAMINER**